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SUGHRUE MION, PLLC 2100 Pennsylvania Avenue, N.W. Washington, DC 20037			WONG, XAVIER S	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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kghyndman@sughrue.com
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Office Action Summary	Application No. 10/648,447	Applicant(s) BRAUN ET AL.	
	Examiner Xavier Szewai Wong	Art Unit 2416	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10th October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Pending: claims **1-20**; **14-20** are new

Response to Arguments

Applicant's arguments filed 10th October 2008 regarding claims **1, 5, 6** and **10** have been fully considered but they are not persuasive. Applicants argue that Dahlman does not teach "*assigning* a carrier frequency of a set of at least first and second carrier frequencies *to each* one of the dedicated channels." (Remarks pg. 9); as a further clarification, the examiner interprets Dahlman as follows: in paragraph 0008 and fig. 5, Dahlman mentions and shows "spectrums (carriers) will be allocated for the downlink (lines 4-8)" and "multiple downlink carriers ($f_{DL,1}$; $f_{DL,2}$) ... may support different types of services (lines 9-12)" and in figure 5 two terminals with different downlink carriers #1 and #2. In other words, the allocation or assignment of different carriers take place for the *plurality of terminals*, *each* with a dedicated channel (fig. 3: terminals MTs 1-4 each has a dedicated channel). Walton is combined to teach a *diversity scheme*.

Applicant's arguments with respect to claims **14-20** have been considered but are moot in view of the new ground(s) of rejection.

Applicants are directed to European Patent **EP 1404065 B1** for further referencing and consideration.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim(s) **1-4** are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory “process” under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled “Clarification of ‘Processes’ under 35 U.S.C. 101”). The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

Claim **1** elements “*providing* a dedicated channel,” “*assigning* a carrier frequency,” “*providing* a code-multiplexed shared channel,” “*sending* one of the first signals” and “*sending* one of the second signals”

(1) do not tie to another statutory class (such as a particular apparatus) by identifying the apparatus (e.g. a request manager or a router manager) that accomplishes the method steps;

(2) are not structure required by the claim, or positively recited in the body of the claim in association with a step significant to the inventive concept.

A claim reciting an adequate structural tie must positively recite the structure of another statutory category in association with a step significant to the inventive concept. The following are examples of structural recitations that do not constitute adequate structural ties per se: (1) Structure recited in a preamble alone, (2) structure in a phrase

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expressing intended use or purpose, and (3) structure in a step insignificant to the inventive concept, such as nominal pre or post solution activity.

Claims **2-4** are also objected for the same reason as set forth above in claim **1**.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim **16** recites the limitation “*the* power amplifiers” in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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3. Claims **1, 4, 5, 6, 9, 10, 14** and **17** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Dahlman et al (US 2002/0145988 A1)** in view of **Walton et al (US 2006/0121946 A1)**.

4. Claims **1** and **5**: **Dahlman et al** show in figure 3 a base station comprising computer program product having program means for sending a plurality of first signals and a plurality of second signals to a plurality of user equipments, the program performing steps of: providing a dedicated channel for each one of the plurality of user equipments ([0007] lines 17-20); assigning (allocating) a carrier frequency of a set of at least first and second carrier frequencies ($f_{DL,1}$ $f_{DL,2}$) to each of the dedicated channels ([0008] lines 1-9); providing a code-multiplexed shared channel for the plurality of user equipments ([0007] lines 20-23). Yet, sending one of the first signals to one of the plurality of user equipments on the dedicated channel of that user equipment on the assigned carrier frequency by a transmit diversity scheme; and sending one of the second signals to one of the plurality of user equipments on the code-multiplexed shared channel on a carrier frequency assigned to that user equipment by multi-user diversity scheme, are not *very specifically* mentioned by **Dahlman et al**. **Walton et al** disclose a base station performing transmit diversity scheme for downlink ([0066]); as well as performing multi-user diversity scheme using a scheduler to identify spatial signatures (frequencies) and antenna assignments in the base station ([0323], [0396-400]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the transmit diversity scheme and multi-user diversity scheme

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of **Walton** et al to the first and second carrier frequencies assigned in the base station of **Dahlman** et al to maximize throughput.

5. Claims **4** and **9**, applied to claims **1** and **6**: **Dahlman** et al, as modified by **Walton** et al, further disclose the set of carrier frequencies having a number of n carrier frequencies, wherein n may be any non-negative integers ([0008]; $f_{DL,1}$ $f_{DL,2}$).

6. Claims **6** and **10**: Referring to claims **1** and **5**, **Dahlman** et al, as modified by **Walton** et al, disclose the claimed invention yet not *specifically* first, second, third, fourth or fifth separate components to perform the steps mentioned in claims **1** and **5**. Nonetheless, the examiner takes official notice that it would have been a matter of design choice to perform the five steps in five separate components as a known option within his or her technical grasp to provide both transmit diversity and multi-user diversity schemes.

7. Claim **14**: **Dahlman**, in combination with **Walton**, discloses each one of the plurality of user equipment is assigned to a first transmission carrier frequency ($f_{DL,1}$) or a second transmission frequency ($f_{DL,2}$) [0008].

8. Claim **17**: **Dahlman**, in combination with **Walton**, teaches the first signals correspond to real-time signals and the second signals correspond to non-real time signals ([0008] lines 12-14: $f_{DL,1}$ is speech = real-time; while $f_{DL,2}$ is data = non-real time).

9. Claim **2** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Dahlman** et al (**US 2002/0145988 A1**) in view of **Walton** et al (**US 2006/0121946 A1**), applied to claim **1**, and in further view of **Chang** et al (**US 2002/0136193 A1**).

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10. Claim **2**, applied to claim **1**: **Dahlman** et al, modified by **Walton** et al, disclose the claimed invention yet do not *specifically* mention the dedicated channel type as DSCH-type, and the code-multiplexed shared channel is HS-DSCH type channel of a HSDPA type transmission system. **Chang** et al disclose a DSCH channel as a dedicated channel assigned to each UE ([0029] lines 17-20), and an HS-DSCH channel for transmitting HSDPA service data ([0029] lines 11-14). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the shared control channel and dedicated channel to use HS-DSCH and DSCH as taught by **Chang** et al, to the base station of **Dahlman** et al, as modified by **Walton** et al, to better control transmission power upon a cell change.

11. Claims **3** and **8** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Dahlman** et al (**US 2002/0145988 A1**) in view of **Walton** et al (**US 2006/0121946 A1**), applied to claims **1** and **6**, and in further view of **Argaman** et al (**US 2006/0052065 A1**).

12. Claims **3** and **8**, applied to claims **1** and **6**: **Dahlman** et al, as modified by **Walton** et al, disclose the claimed invention (**Walton** et al disclose a component that sends signals in transmit diversity scheme) except do not *specifically* mention performing sending of the first and second signals by means of first and second MCPAs being coupled to first and second antennas, the first and second MCPAs having at least the first and second frequencies. **Argaman** et al show in figure 8 a base transceiver station comprising MCPA 85 and MCPA 86 are coupled to a first antenna 83 and a second antenna 84 respectively, wherein the MCPA 85 and MCPA 86 each may carry 3 (at least two) CDMA

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carriers ([0140]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the MCPA and antenna structure of **Argaman** et al, to the base station of **Dahlman** et al, as modified by **Walton** et al, for transmit diversity.

Claim **7** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Dahlman** et al (**US 2002/0145988 A1**) in view of **Walton** et al (**US 2006/0121946 A1**), applied to claim **6**, and in further view of **Isokangas** et al (**US 2004/0213297 A1**).

Claim **7**, applied to claim **6**: **Dahlman** et al, as modified by **Walton** et al, disclose the claimed invention except do not *specifically* mention the scheduler sending the second signals only when a constructive channel fade is detected. **Isokangas** et al clearly teach a scheduler that exploits multi-user diversity by scheduling only those users in constructive fades in shared HS-DSCH ([0008]). It would have been obvious to one of ordinary skill in the art at the time the invention was created to modify the scheduler of **Dahlman** et al, as modified by **Walton** et al, to send signals only when a constructive channel fade is detected as taught by **Isokangas** et al, to better match current channel conditions.

Claims **11**, **12** and **13** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Dahlman** et al (**US 2002/0145988 A1**) in view of **Walton** et al (**US 2006/0121946 A1**), applied to claims **1** and **12**, and in further view of **Mimura** (**US 6,021,123**).

Claims **11**, **12** and **13**, applied to claims **1** and **12**: **Dahlman** et al, as modified by **Walton** et al, disclose the claimed invention yet do not *specifically* mention each one of the plurality of UEs are split into a first group of UEs and a second group of UEs wherein the first group of UEs are assigned to the first carrier frequencies and the second group of UEs are assigned to the second frequencies. **Mimura** teaches a CDMA cellular system that divides frequencies into a first group and a second group, wherein the first group of frequencies are assigned to base stations_{1-n} and the second group of frequencies are assigned to base stations_{a-c} wherein a mobile station is assigned to the first group of frequencies (abstract), and further the mobile station may be assigned to the second group of frequencies based on rate of use (abstract; fig. 13 wherein first group $f_{01}, f_{02} \rightarrow$ handoff \rightarrow second group f_{11-13}). Therefore, if there are multiple mobile stations wherein one group of mobiles have high use rate while the other group of mobiles have low use rate, the high use rate mobiles would be assigned to the first group of frequencies while the low use rate mobiles would be assigned to the second group of frequencies (col. 12 lines 57-67; col. 13 lines 1-8). It would have been obvious to one of ordinary skill in the art at the time the invention was created to apply the CDMA frequencies and group assignment technique of **Mimura** to the base station of **Dahlman** et al, as modified by **Walton** et al, to allow smoother handoffs.

Claim **15** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Dahlman** et al (**US 2002/0145988 A1**) in view of **Walton** et al (**US 2006/0121946 A1**), applied to claim **14**, and in further view of **Dent** (**US 6,061,568**).

Claim **15**: **Dahlman**, in combination with **Walton**, discloses the first and second transmission carrier frequencies wherein *re-use* is taught yet not specifically “assigning first and second transmission frequencies in an alternating way, wherein when a UE becomes active the first carrier frequency is assigned to the UE, and when a next UE becomes active the second carrier frequency is assigned to the next UE.” **Dent** teaches a *concept* of assigning first and second transmission frequencies in an alternating way, wherein when a UE becomes active the first carrier frequency is assigned to the UE, and when a next UE becomes active the second carrier frequency is assigned to the next UE (col. 4 lines 29-33: mobile stations are assigned to a carrier, or channel, on a first come first serve basis. In other words, when a remote station requests service, communications between that mobile station and the base station are assigned to the *first available channel*, possibly selected from an ordered list intended to reduce system-wide co-channel interference; thus, if the *first available channel* is the first carrier frequency and a next available channel is the second carrier frequency, mobile stations can be re-used if *only* two – *first* and *second* – frequencies are available and be assigned in an alternative way). It would have been obvious to one of ordinary skill in the art when the invention was created to implement a *concept* of assigning first and second transmission frequencies in an alternating way, wherein when a UE becomes active the first carrier frequency is assigned to the UE, and when a next UE becomes active the second carrier frequency is assigned to the next UE as taught by **Dent** to the system and method of **Dahlman**, in combination with **Walton**, to reduce system-wide co-channel interference (**Dent**: col. 4 lines 34-36).

Claims **16** and **19** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Dahlman** et al (US 2002/0145988 A1) in view of **Walton** et al (US 2006/0121946

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A1) and **Mimura (US 6,021,123)**, applied to claims **14** and **12**, and in further view of **Yun et al (US 5,886,988)**.

Claim **16: Dahlman**, in combination with **Walton** and **Mimura**, discloses assignments of the first and second transmission frequencies yet not specifically “in order to balance load of power amplifiers.” **Yun** teaches assignments of the first and second transmission frequencies in order to balance load of power amplifiers (col. 8 lines 43-47: multi-carrier power amplifiers... col. 22 lines 38-49: load threshold and monitoring). It would have been obvious to one of ordinary skill in the art when the invention was created to balance the load of the amplifiers as taught by **Yun** to the system and method of **Dahlman**, in combination with **Walton** and **Mimura**, to avoid power overload.

Claim **19: Dahlman**, in combination with **Walton** and **Mimura**, discloses second signals sent to the first group of UEs yet not specifically “a first and second multi-carrier power amplifier (MCPA) to amplify the signals to the first group UEs.” **Yun** teaches a *concept* of using multi-carrier amplifier to amplify signals to group of UEs (col. 8 lines 43-47: MCPA ... group of subcarriers). It would have been obvious to one of ordinary skill in the art when the invention was created to utilize a first and second multi-carrier power amplifier to amplify the signals to the first group UEs as taught by **Yun** to the system and method of **Dahlman**, in combination with **Walton** and **Mimura**, for load balancing of amplifiers.

Claim **18** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Dahlman et al (US 2002/0145988 A1)** in view of **Walton et al (US 2006/0121946 A1)**, applied to claim **14**, and in further view of **Dent (US 2001/0012280 A1)**.

Claim **18**: **Dahlman**, in combination with **Walton**, discloses the first and second transmission frequencies yet does not very specifically discuss they are assigned *dynamically*. **Dent** teaches discuss the assignment of the first and second transmission frequencies is *dynamic* [0021: Each of the frequency allocation systems for a TDMA time slot may include a fixed frequency reuse system or an adaptive channel allocation system for *dynamically adjusting the frequency allocation* in response to changes in *loading* or other system parameters]. It would have been obvious to one of ordinary skill in the art when the invention was created to implement dynamic frequency assignment as taught by **Dent** to the system and method of **Dahlman**, in combination with **Walton**, for load balancing.

Claim **20** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Dahlman et al (US 2002/0145988 A1)** in view of **Walton et al (US 2006/0121946 A1)**, applied to claim **1**, and in further view of **Isokangas et al (US 2004/0213297 A1)** and **Katz (US 6,763,237 B1)**.

Claim **20**: **Dahlman et al**, modified by **Walton et al**, disclose scheduling of second signals to be sent over the code-multiplexed shared channel in order to provide multi-user diversity (**Walton et al** disclose a base station performing transmit diversity scheme for downlink [0066]; as well as performing multi-user diversity scheme using a scheduler to identify spatial signatures (frequencies) and antenna assignments in the base station in [0323] and [0396-400]); yet do not *specifically* mention scheduling only the plurality of second signals to the UEs in constructive fades. **Isokangas et al** teach a scheduler that exploits multi-user diversity by scheduling only the plurality of second signals to the UEs in constructive fades ([0008] scheduling only those users in constructive fades in shared HS-

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DSCH). It would have been obvious to one of ordinary skill in the art at the time the invention was created to modify the scheduler of **Dahlman** et al, as modified by **Walton** et al, to send signals only when a constructive channel fade is detected as taught by **Isokangas** et al, to better match current channel conditions. Yet, it is not specifically taught that “whereby [first and second] power amplifiers are used for sending of the plurality of [first] signals and the plurality of [second] signals, and scheduling the [second] plurality of signals is performed such that usage of the [first and second] power amplifiers is statistically balanced.” **Katz** teaches a *concept* of [first and second] power amplifiers are used for sending of the plurality of [first] signals and the plurality of [second] signals, and scheduling the [second] plurality of signals is performed such that usage of the [first and second] power amplifiers is statistically balanced (col. 6 lines 26-34: power amplifiers power loading equally balanced ... col. 14 lines 52-58: signals... multiplexed with respect to frequency). It would have been obvious to one of ordinary skill in the art when the invention was created to implement power amplifier load balancing for signal sending as taught by **Katz** to the system and method of **Dahlman** et al, as modified by **Walton** et al and **Isokangas** et al, to avoid overloading one of the amplifiers.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. **EP 1404065 B1**: pertinent to applicants' current invention

2. **Oh** et al, US 6714789 B1: If the mobile station is active, the network entity may send the frequency-assignment message via the traffic channel on which the mobile station is currently assigned; the mobile station may then switch to that carrier frequency, synch with the new physical sector via the synch channel, and start to monitor the paging channel in the new physical sector

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Xavier Wong whose telephone number is 571.270.1780. The examiner can normally be reached on Monday through Friday 8:30 am - 6:00 pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on 571.272.3174. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866.217.9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571.272.1000.

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/Xavier Szewai Wong/

X.S.W

3rd January 2009

/Kevin C. Harper/

Primary Examiner, Art Unit 2416